* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2866/2002

SOCIAL JURIST ..... Petitioner

Through: Mr.Ashok Aggarwal, Adv. with Ms.Nisha Tomar, Adv.

Versus

GOVT. OF N.C.T. OF DELHI & ORS ..... Respondents

Through: Ms.Zubeda Begum, Adv. with Ms.Sana Ansari, Adv. for R-1/GNCT of Delhi.
Mr.Sanjeeve Kr. Dubey, Adv. with Ms.Zeenat Masoodi, Adv. for L&DO.
Mr.Neeraj Chaudhari, CGSC with Mr.Ravjyot Singh, Adv. for R/UOI.
Mr.Ajay Verma, Adv. for DDA.
Mr.Anoop Bagai, Sr.Adv. with Mr.Sumeet Anand, Mr.Amitesh Kumar, Advs. for PSRI Hospital.
Mr.A.K.Singla, Sr.Adv. with Mr.Mridul Gupta, Adv. for Sunder Lal Jain Hospital & Amar Jyoti Hospital.
Ms.Renu Gupta, Adv. for Ganga Ram Hospital.
Mr.Lalit Bhasin, Adv. with Ms.Ratna Dhingra, Ms.Bhavna Dhami, Ms.Sneha Balakrishnan, Advs. for RGCRI Hospital.
Mr.Rajeev Sharma, Adv. with Mr.Uddyam Mukherjee, Adv. for St. Stephen's Hospital.
Mr. Sanjeev Puri, Sr. Adv. with Mr. Sajad Sultan and Mr. Amitesh Mishra, Adv. for R9,10,41,11,35 and 36.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

O R D E R

% **13.03.2013**

CM No. 15454/2008

This petition in public interest was filed for directions to the official respondents to identify all such hospitals/ nursing homes in Delhi which were allotted land either free of costs or at a concessional rates and to ensure compliance of the conditions of land allotment to such hospitals/ nursing homes, with regard to free treatment of the poor and indigent persons. The writ petition came to be disposed of vide order dated 22.3.2007, *inter alia*, with the following directions:

> "71. In view of the unanimity of the views of the Committees and particularly the Qureshi Committee report which has even been accepted by the Government as afore-noticed, we consider it appropriate that the condition of free patient treatment to the indigent strata of the society shall be read and construed as 25% for OPD and 10% for IPD. This percentage of patients will not be liable to pay any expenses in the hospital. In other words, they will be provided free admission, bed, medication, treatment, surgery facility, nursing facility and consumables and non-consumables. The hospitals charging any money from such patients shall be liable to be proceeded against in accordance with law. Besides

that, this would be treated as violation of the orders of the court...."

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All the 20 hospitals stated in this judgment and/or all other hospitals identically situated shall strictly comply with the term of free patient treatment to indigent/poor persons of Delhi as specified above i.e. 25% OPD and 10% IPD patients completely free of charges in all respects.

2. CM 9246/2007 was filed by Govt. of NCT of Delhi seeking, *inter alia,* clarification that all the hospitals which had been granted land on concessional rates would abide by the order of free treatment till such time it was varied by any competent Court. Vide order dated 17.7.2007, this Court in modification of the order dated 22.3.2007, directed that all the hospitals which had been granted land on concessional rates would abide by the order for free treatment, till such time it was varied by any competent Court.

Alleging disobedience of the directions contained in the order dated 22.3.2007 by three hospitals namely Moolchand Khairati Lal Trust Hospital, St. Stephan Hospital and Rajiv Gandhi Cancer Institute and Research Centre, the petitioner is seeking initiation of contempt proceedings against

these hospitals, besides directions to the official respondents to take appropriate action against them in terms of the directions contained in the said order. It is stated in the application that vide an advertisement dated 7.11.2008, government had named 37 private hospitals which were obliged to provide free treatment to the poor patients and those private hospitals included Moolchand Khairati Lal Trust Hospital, St. Stephan Hospital and Rajiv Gandhi Cancer Institute and Research Centre, but these hospitals are not providing free test and free treatment to the poor patients, thereby disobeying the directions given by this Court.

3. It is an admitted position that the above named three hospitals were not impleaded as a party to the writ petition either initially or at a later date. It is also an admitted position that no opportunity of hearing was given to these hospitals before the order dated 22.3.2007 came to be passed by this Court.

4. The learned counsel representing these three hospitals have contended that since neither they were impleaded as a party to the writ petition nor were they given any opportunity of hearing before the orders dated 22.3.2007 and 17.7.2007 came to be passed, such orders cannot, in law, be

applied to them. This is also their submission that since neither the letter of allotment issued to them nor the lease deed originally executed in their favour contained any stipulation to provide free treatment to any patient, they are not under any legal obligation to provide free beds and/or free treatment to any patient coming to their hospital. They have also drawn our attention to the order dated 10.8.2007 whereby this Court observed that further arguments were required to be addressed in respect of hospitals which did not have a stipulation in their lease deed or the allotment letter regarding free treatment. They have also pointed out that Moolchand Khairati Lal Trust Hospital and St. Stephan Hospital have already filed writ petitions challenging the action of the respondents. According to the learned counsel representing Rajiv Gandhi Cancer Institute and Research Centre, similar writ petition is proposed to be filed by the said hospital. The learned counsel for the respondents on the other hand submits that since the land to these hospitals was allotted at concessional rates and later a clause requiring them to provide free beds and free treatment to the poor patients has also since been inserted in the lease deed, they are under a legal obligation to comply with the orders passed by this Court on 22.3.2007 and 17.7.2007.

5. In our view, considering the fact that these three hospitals were not impleaded as a party to the W.P.(C) 2866/2002 either initially or during pendency of the writ petition, no notice or opportunity of hearing was given to them before the said orders came to be passed, and this Court vide order dated 10.8.2007 acknowledged that further arguments were required to be addressed in respect of hospitals which do not have a stipulation in their lease deeds or the allotment letters regarding free treatment to the patients, no case for initiating proceedings for disobedience of the orders dated 22.3.2007 and 17.7.2007 by the aforesaid three hospitals is made out. This is not a case of a contumacious or willful disobedience of the orders of the Court. Initiation of contempt proceedings would not be justified where a person accused of disobedience has a bonafide case with respect to the applicability of the order alleged to have been disobeyed by him and it would be difficult to justify initiation of contempt proceedings against him. We, therefore, find no merits in CM 15454/2008, filed by the petitioner. The same is hereby dismissed.

CM 18603/2012

6. Vide this application, the Director of Health Services, Govt. of NCT

of Delhi is seeking clarification of certain paragraphs of the order dated 22.3.2007. It is stated in the application that in terms of the order passed by this Court on 22.3.2007, certain hospitals would be liable from 2007 whereas another set of hospitals shall be liable from the date on which they became operational/ functional. The applicant is accordingly seeking directions with regard to the date to be taken for the purpose of calculating the profits earned by various hospitals in extending free treatment to the poor. It is also stated in the application that the applicant is in the process of hiring professional Chartered Accountants to scrutinize the books of accounts of all the hospitals which have failed to comply with the directions contained in the order dated 22.3.2007 and these professional wants to know the specific year from which the scrutiny of records of the hospitals is required to be carried out by them. The applicant is seeking clarification of paragraphs 84, 91(C) and 91(D) of the order dated 22.3.2007 to the above referred extent.

7. Paragraph 91(C) and 91(D) of the order dated 22.3.2007 reads as under:

> 91.C.The conditions imposed in this judgment qua those hospitals who have fully or partially complied with the

condition, shall be prospective.

D. The hospitals which have not complied with the conditions at all and have persisted with the default despite issuance of even show cause notices by the authorities, for them the condition shall operate from the date their hospitals have become functional.

8. It is evident from the bare perusal of the above referred paragraph that as far as hospitals which had either partly or fully complied with the condition with respect to free treatment of poor patients, the directions contained in the order dated 22.3.2007 would apply prospectively i.e. from the date of the order whereas in the case of the hospitals which had not complied with such a condition either wholly or partly, the directions contained in the order dated 22.3.2007 would operate from the date their hospitals became functional. It is for the official respondents to ascertain which hospitals did not either fully or partly comply with the condition to provide free medical treatment to the poor patients became functional and which hospitals had complied with the said condition, either wholly or partly.

9. In paragraph 84 of the order dated 22.3.2007, this Court, *inter alia,*

observed that the hospitals which were awarded land by DDA and/or L&DO were expected to make the hospitals functional within two years from the date they had taken the possession of the plots in question and they were required to immediately start complying with the condition for free treatment of the patients. It was further observed that there was no jurisdiction whatsoever on the part of the hospitals not to comply with the mandate of the condition and, therefore, they would be asked to make good of the non-compliance of the condition and they must repay to the authorities and the society at large, for the unwarranted profits made by them at the costs of the poor for all these years, to the extent of percentage of the free patient treatment in terms of money, proportionate to the number of patients treated by them during the relevant period and they must pay that money to the authorities who shall create a central corpus/ pool, which shall be utilized for the welfare, healthcare and treatment of the poorer sections of the society in government hospitals.

It is quite clear from perusal of the said paragraph that the obligation to repay to the authorities and the society in respect of unwarranted profits made by such hospitals by not adhering to the stipulation for providing free

medical treatment to the poor patients arises with effect from two years from the date on which they took possession of the plots of land allotted to them. Therefore, there seems to be no need of any clarification as far as the above referred direction is concerned. The accounts of such hospital need to be scrutinized with effect from two years from the date they took possession of the land on which the hospital is constructed. Of course, it is for the official respondent ascertain on which date the possession of the allotted land was taken by these hospitals.

The application stands disposed of accordingly.

CHIEF JUSTICE

V.K. JAIN, J

MARCH 13, 2013
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